



General Assembly

January Session, 2009

Amendment

LCO No. 8896

SB0098008896SD0

Offered by:
SEN. HARRIS, 5th Dist.

To: Subst. Senate Bill No. 980

File No. 529

Cal. No. 374

"AN ACT CONCERNING CERTIFICATES OF NEED."

1 Strike section 1 in its entirety and insert the following in lieu thereof:

2 "Section 1. Section 19a-638 of the general statutes is repealed and the
3 following is substituted in lieu thereof (*Effective July 1, 2009*):

4 (a) Except as provided in sections 19a-487a and 19a-639a to 19a-
5 639c, inclusive, as amended by this act:

6 (1) Each health care facility or institution, that intends to (A) transfer
7 [all or part of] its ownership or control, (B) change the governing
8 powers of the board of a parent company or an affiliate, whatever its
9 designation, or (C) change or transfer the powers or control of a
10 governing or controlling body of an affiliate, shall submit to the office,
11 prior to the proposed date of such transfer, or change, a request for
12 permission to undertake such transfer or change. For purposes of this
13 section and section 19a-639b, as amended by this act, "transfer its
14 ownership or control" means a transfer that impacts or changes the
15 governance or controlling body of a health care facility or institution,

16 including, but not limited to, all affiliations, mergers or any sale or
17 transfer of net assets of a health care facility or institution.

18 (2) Each health care facility or institution or state health care facility
19 or institution, including any inpatient rehabilitation facility, which
20 intends to introduce any additional function or service into its
21 program of health care shall submit to the office, prior to the proposed
22 date of the institution of such function or service, a request for
23 permission to undertake such function or service.

24 (3) Each health care facility or institution or state health care facility
25 or institution which intends to terminate a health service offered by
26 such facility or institution or reduce substantially its total bed capacity,
27 shall submit to the office, prior to the proposed date of such
28 termination or decrease, a request to undertake such termination or
29 decrease.

30 (4) Except as provided in sections 19a-639a to 19a-639c, inclusive, as
31 amended by this act, each applicant, prior to submitting a certificate of
32 need application under this section or section 19a-639, as amended by
33 this act, or under both sections, shall submit a request, in writing, for
34 application forms and instructions to the office. The request shall be
35 known as a letter of intent. A letter of intent shall include: (A) The
36 name of the applicant or applicants; (B) a statement indicating whether
37 the application is for (i) a new, replacement or additional facility,
38 service or function, (ii) the expansion or relocation of an existing
39 facility, service or function, (iii) a [change in] transfer of its ownership
40 or control, (iv) a termination of a service or a reduction in total bed
41 capacity and the bed type, (v) any new or additional beds and their
42 type, (vi) a capital expenditure over three million dollars, (vii) the
43 purchase, lease or donation acceptance of major medical equipment
44 costing over three million dollars, (viii) a CT scanner, PET scanner,
45 PET/CT scanner or MRI scanner, [cineangiography equipment,] a
46 linear accelerator or other similar equipment utilizing technology that
47 is new or being introduced into the state, or (ix) any combination
48 thereof; (C) the estimated capital cost, value or expenditure; (D) the

49 town where the project is or will be located; and (E) a brief description
50 of the proposed project. The office shall provide public notice of any
51 complete letter of intent submitted under this section or section 19a-
52 639, as amended by this act, or both, by publication in a newspaper
53 having a substantial circulation in the area served or to be served by
54 the applicant. Such notice shall be submitted for publication not later
55 than twenty-one days after the date the office determines that a letter
56 of intent is complete. No certificate of need application will be
57 considered submitted to the office unless a current letter of intent,
58 specific to the proposal and in compliance with this subsection, has
59 been on file with the office for not less than sixty days. A current letter
60 of intent is a letter of intent that has been on file at the office up to and
61 including one hundred twenty days, except that an applicant may
62 request a one-time extension of a letter of intent of up to an additional
63 thirty days for a maximum total of up to one hundred fifty days if,
64 prior to the expiration of the current letter of intent, the office receives
65 a written request to so extend the letter of intent's current status. The
66 extension request shall fully explain why an extension is requested.
67 The office shall accept or reject the extension request not later than
68 seven days from the date the office receives such request and shall so
69 notify the applicant.

70 (b) The office shall make such review of a request made pursuant to
71 subdivision (1), (2) or (3) of subsection (a) of this section as it deems
72 necessary. In the case of a [proposed transfer of] health care facility or
73 institution that intends to transfer its ownership or control, the review
74 shall include, but not be limited to, the financial responsibility and
75 business interests of the transferee and the ability of the institution to
76 continue to provide needed services or, in the case of the introduction
77 of a new or additional function or service expansion or the termination
78 of a service or function, ascertaining the availability of such service or
79 function at other inpatient rehabilitation facilities, health care facilities
80 or institutions or state health care facilities or institutions or other
81 providers within the area to be served, the need for such service or
82 function within such area and any other factors which the office deems

83 relevant to a determination of whether the facility or institution is
84 justified in introducing or terminating such functions or services into
85 or from its program. The office shall grant, modify or deny such
86 request no later than ninety days after the date of receipt of a complete
87 application, except as provided for in this section. Upon the request of
88 the applicant, the review period may be extended for an additional
89 fifteen days if the office has requested additional information
90 subsequent to the commencement of the review period. The
91 commissioner may extend the review period for a maximum of thirty
92 days if the applicant has not filed in a timely manner information
93 deemed necessary by the office. Failure of the office to act on such
94 request within such review period shall be deemed approval thereof.
95 The ninety-day review period, pursuant to this subsection, for an
96 application filed by a hospital, as defined in section 19a-490, and
97 licensed as a short-term acute-care general hospital or children's
98 hospital by the Department of Public Health or an affiliate of such a
99 hospital or any combination thereof, shall not apply if, in the certificate
100 of need application or request, the hospital or applicant projects either
101 (1) that, for the first three years of operation taken together, the total
102 impact of the proposal on the operating budget of the hospital or an
103 affiliate of such a hospital or any combination thereof will exceed one
104 per cent of the actual operating expenses of the hospital for the most
105 recently completed fiscal year as filed with or determined by the office,
106 or (2) that the total capital expenditure for the project will exceed
107 fifteen million dollars. If the office determines that an application is not
108 subject to the ninety-day review period pursuant to this subsection, it
109 shall remain so excluded for the entire review period of that
110 application, even if the application or circumstances change and the
111 application no longer meets the stated terms of the exclusion. Upon a
112 showing by such facility or institution that the need for such function
113 [.] or service or termination or [change of] transfer of its ownership or
114 control is of an emergency nature, in that the function, service or
115 termination or [change of] transfer of its ownership or control is
116 necessary to maintain continued access to the health care services
117 provided by the facility or institution, or to comply with requirements

118 of any federal, state or local health, fire, building or life safety code, the
119 commissioner may waive the letter of intent requirement, provided
120 such request shall be submitted not less than fourteen days before the
121 proposed date of institution of the function, service or termination or
122 [change] transfer of its ownership or control.

123 (c) (1) The office may hold a public hearing with respect to any
124 complete certificate of need application submitted under this section.
125 At least two weeks' notice of such public hearing shall be given to the
126 applicant, in writing, and to the public by publication in a newspaper
127 having a substantial circulation in the area served by the facility,
128 institution or provider. At the discretion of the office, such hearing
129 may be held in Hartford or in the area so served or to be served. In
130 conducting its activities under this section, section 19a-639, as
131 amended by this act, or under both sections, the office may hold
132 hearings on applications of a similar nature at the same time.

133 (2) The office may hold a public hearing after consideration of
134 criteria that include, but need not be limited to, whether the proposal
135 involves: (A) The provision of a new or additional health care function
136 or service through the use of technology that is new or being
137 introduced into the state; (B) the provision of a new or additional
138 health care function or service that is not provided in either a region
139 designated by the applicant or in the applicant's existing primary
140 service area as defined by the office; or (C) the termination of an
141 existing health care function or service, the reduction of total beds or
142 the closing of a health care facility.

143 (3) The office shall hold a public hearing with respect to any
144 complete certificate of need application submitted to the office under
145 this section if (A) three individuals or an individual representing an
146 entity with five or more people submit a request, in writing, that a
147 public hearing be held on the proposal after the office has published
148 notice of a complete letter of intent, and (B) such request is received by
149 the office not later than twenty-one days after the date that the office
150 deems the certificate of need application complete."

151 In line 351, insert an opening and closing bracket around "or"

152 In line 352, after "home" insert "; or (12) a program licensed or
153 funded by the Department of Children and Families, provided such
154 program is not a psychiatric residential treatment facility, as defined in
155 42 CFR 483.352"

156 In lines 415 and 421, strike "health care facility or institution" and
157 insert "short-term acute care general or children's hospital or chronic
158 disease hospital" in lieu thereof

159 In line 424, after "location" insert ", provided the short-term acute
160 care general or children's hospital or chronic disease hospital submits
161 information to the office concerning the type of outpatient services
162 such hospital proposes to provide at the alternative location, the
163 location where such services will be provided and the reasons for the
164 proposal to provide such services at an alternative location

165 Strike section 4 in its entirety and insert the following in lieu thereof:

166 "Sec. 4. Section 19a-639b of the general statutes is repealed and the
167 following is substituted in lieu thereof (*Effective October 1, 2009*):

168 (a) The Commissioner of Health Care Access or the commissioner's
169 designee may grant an exemption from the requirements of section
170 19a-638, as amended by this act, or subsection (a) of section 19a-639, as
171 amended by this act, or both, for any nonprofit facility, institution or
172 provider that is currently under contract with a state agency or
173 department and is seeking to engage in any activity, other than the
174 termination of a service or a facility, otherwise subject to said section
175 or subsection if:

176 (1) The nonprofit facility, institution or provider is proposing a
177 capital expenditure of not more than three million dollars and the
178 expenditure does not in fact exceed three million dollars;

179 (2) The activity meets a specific service need identified by a state
180 agency or department with which the nonprofit facility, institution or

181 provider is currently under contract;

182 (3) The commissioner, executive director, chairman or chief court
183 administrator of the state agency or department that has identified the
184 specific need confirms, in writing, to the office that (A) the agency or
185 department has identified a specific need with a detailed description of
186 that need and that the agency or department believes that the need
187 continues to exist, (B) the activity in question meets all or part of the
188 identified need and specifies how much of that need the proposal
189 meets, (C) in the case where the activity is the relocation of services,
190 the agency or department has determined that the needs of the area
191 previously served will continue to be met in a better or satisfactory
192 manner and specifies how that is to be done, (D) in the case where [the
193 activity is the transfer of all or part of the ownership or control of] a
194 facility or institution [,] seeks to transfer its ownership or control, that
195 the agency or department has investigated the proposed change and
196 the person or entity requesting the change and has determined that the
197 change would be in the best interests of the state and the patients or
198 clients, and (E) the activity will be cost-effective and well managed;
199 and

200 (4) In the case where the activity is the relocation of services, the
201 Commissioner of Health Care Access or the commissioner's designee
202 determines that the needs of the area previously served will continue
203 to be met in a better or satisfactory manner.

204 (b) The Commissioner of Health Care Access or the commissioner's
205 designee may grant an exemption from the requirements of section
206 19a-638, as amended by this act, or subsection (a) of section 19a-639, as
207 amended by this act, or both, for any nonprofit facility, institution or
208 provider that is currently under contract with a state agency or
209 department and is seeking to terminate a service or a facility, provided
210 (1) the commissioner, executive director, chairperson or chief court
211 administrator of the state agency or department with which the
212 nonprofit facility, institution or provider is currently under contract
213 confirms, in writing, to the office that the needs of the area previously

214 served will continue to be met in a better or satisfactory manner and
215 specifies how that is to be done, and (2) the Commissioner of Health
216 Care Access or the commissioner's designee determines that the needs
217 of the area previously served will continue to be met in a better or
218 satisfactory manner.

219 (c) A nonprofit facility, institution or provider seeking an exemption
220 under this section shall provide the office with any information it
221 needs to determine exemption eligibility. An exemption granted under
222 this section shall be limited to part or all of any services, equipment,
223 expenditures or location directly related to the need or location that the
224 state agency or department has identified.

225 (d) The office may revoke or modify the scope of the exemption at
226 any time following a public review that allows the state agency or
227 department and the nonprofit facility, institution or provider to
228 address specific, identified, changed conditions or any problems that
229 the state agency, department or the office has identified. A party to any
230 exemption modification or revocation proceeding and the original
231 requesting agency shall be given at least fourteen calendar days
232 written notice prior to any action by the office and shall be furnished
233 with a copy, if any, of a revocation or modification request or a
234 statement by the office of the problems that have been brought to its
235 attention. If the requesting commissioner, executive director, chairman
236 or chief court administrator or the Commissioner of Health Care
237 Access certifies that an emergency condition exists, only forty-eight
238 hours written notice shall be required for such modification or
239 revocation action to proceed.

240 (e) A nonprofit facility, institution or provider that is a psychiatric
241 residential treatment facility, as defined in 42 CFR 483.352, shall not be
242 eligible for any exemption provided for in this section, irrespective of
243 whether or not such facility is under contract with a state agency or
244 department."

245 In line 442, strike the brackets and "or"

- 246 Strike lines 443 to 446, inclusive, in their entirety
- 247 In line 447, strike the brackets and "(3)"